"completed" when a user dials an "800" access code—but is not connected to the desired telephone number. In fact, the House Report addressing Section 276 supports the conclusion that a call is only completed when the calling party is connected to the called party. The Report states that payphone service providers must be fairly compensated for "toll-free" calls to subscribers to 800 services and calls "dialed by *means* of carrier access codes."[31] The use of the word "means" suggests that simply reaching the intermediate access number of a service provider is the dialing method only, not a completed call for payphone compensation purposes.

Finally, a determination that a call was completed when it reached an intermediate telecard service provider switch would lead to inconsistent and discriminatory results. Toll-free access services are no different from other forms of "dial-around" payphone access. If the Commission were to impose payphone compensation on telecard service providers where calls only reach the access point of the network, a similar rule would need to be applied to all "950" and "10XXX' calls placed from payphones, as well as 1-800-COLLECT, 1-800-OPERATOR, 1-800-CALL-ATT, etc. ITA has little doubt that the NPRM's tentative conclusion that a carrier pays mechanism is preferable was not intended to suggest that access code dialed calls should be considered "completed" where the user—whether due to misdialing, entering an invalid PIN or authorization code, reaching a busy signal, attempting a call in which the called party does not answer or simply hanging up—only reaches the carrier's network, but not the dialed telephone number.

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[30] *Id.*

[31] H.R. Rep. No. 104-204, 104th Congress, 1st Sess., pt. 1, at 88 (1996) (emphasis added).

Under a carrier-pays compensation approach in which the 800 access provider directly pays the payphone provider compensation, a mechanism is needed to enable a determination of the percentage of completed calls. ITA proposes that the Commission implement rules under which a telecard provider would certify its aggregate completion percentage to the IXC providing it with 800 service, subject to verification and audit in the event of a billing dispute. The IXC would then reduce its payments accordingly to the payphone providers.

The Commission has previously adopted a similar approach in situations where ANI information was not available for precise determinations regarding the nature of a telephone call that impacted the level of charges between carriers.[32] This situation arose in the case of Feature Group A and B calls, where often ANI was not delivered because of technical limitations. Rather than require significant network upgrades enabling ANI passage so carriers could precisely determine whether a call was interstate or intrastate, the Commission adopted a mechanism that permitted carriers to estimate interstate usage through a Percentage of Interstate Usage ("PIU") factor, subject to minimal audit and verification procedures.[33] Likewise, here the Commission should adopt a mechanism in which telecard providers provide a Percent of Completed Calls ("PCC") factor to 800 service providers that the 800 service providers would use to adjust their payments to the payphone providers. This would avoid expensive network upgrades, reduce transaction costs and is consistent with previous Commission actions.

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[32] *See Determination of Interstate and Intrastate Usage of Feature Group A and Feature Group B Access Service*, Memorandum Opinion and Order, 4 FCC Rcd. 8448 (1989).

[33] *Id.* ¶ 11-12.

## IV. THE COMMISSION SHOULD PROVIDE AN ADEQUATE TRANSITION PERIOD BEFORE IMPLEMENTING ITS NEW PAYPHONE COMPENSATION RULES

The Commission must allow for an adequate transition period to give industry time to adapt to whatever rules the Commission adopts.[34] Among other things, a phase-in period is needed to permit telecards already distributed—based on existing pricing structures and tariffed rates that do not account for usage-based payphone charges—to continue to be used. Because telecard services are pre-paid and ordinarily priced at a fixed per-minute rate, imposing per-call charges on the outstanding base of telecards in circulation would destroy the simple (and consumer-friendly) pricing structure of the industry, and *require many smaller service providers to offer service at a loss.*

### A. Telephone Calls Made Using Telecards Distributed Prior To The Effective Date Of Rules Adopted In This Proceeding Must Be Exempt From The New Payphone Compensation Rules

At any given time there are several million telecards either in the hands of consumers or in the distribution pipeline. The prices for these cards and the calling time programmed into the telecard service provider computers are based on existing tariffs and customer agreements. The calling rates for those cards already in circulation could not be changed without violating these tariffs and customer agreements. While legally possible to reprogram the calling rates and account values for telecards in the distribution pipeline and not yet circulated to consumers, it would be nearly impossible from a practical matter to determine which cards were in the hands of consumers and which cards remained in the distribution pipeline. (*i.e.*, in telecard service provider

[34] The NPRM does not specifically address the need for a transition period, however, it does appear to recognize this need in ¶ 39 of Section III(A)(2)(e).

storage, in inventory at store outlets or in telecard dispensers). Furthermore, to make such a change would require telecard service providers to reprogram each account for the millions of cards not yet circulating.

Given these legal restrictions, and practical difficulties in adjusting the account values for telecards already in the hands of consumers or in the distribution pipeline, the Commission should provide at least six months from the adoption of new payphone compensation rules that may impact telecard service provider costs to allow for these telecards to be used at rates under existing tariffs and consumer agreements. Six months will provide adequate time for the majority of these telecards to be used and allow telecard service providers to adopt a new rate structure.

### B. Local Exchange Carrier Carrier Common Line Charges Imposed On Interconnecting Carriers Must Be Reduced Before Implementing A New Payphone Compensation Method

Currently, CCL charges include payphone common line costs.[35] IXCs pass these charges along to telecard service providers in their rates for toll free access. Once the Commission adopts a new payphone cost recovery mechanism, the CCL charge should be reduced and IXCs should pass this reduction onto telecard service providers in the form of lower rates for toll free access service. The reductions in the CCL charge must coincide with imposition of the new payphone compensation method or carriers will be paying double to payphone providers. This result would be untenable and inequitable for any period of time. Therefore, the Commission must ensure that reductions in the CCL charge coincide with imposition of the new payphone compensation fee.

[35] NPRM ¶ 41.

### C. The Commission Must Provide Adequate Time To Allow Telecard Service Providers To Implement Network And Marketing Changes Responding To Whatever Rules The Commission Adopts

Whatever new payphone compensation scheme the Commission adopts, telecard service providers and other carriers will be required to implement network and marketing changes. If the Commission adopts a carrier pays mechanism where the IXC providing the toll free access service pays the payphone provider and the telecard service provider does not, from a telecard service provider perspective the network changes needed would be minimal. Primarily only administrative and marketing changes would be needed. It is likely that in this case six months would be sufficient from the adoption date of the new rules to their implementation to allow adequate time for telecard service providers to make network and administrative changes in response to the new rules.

It should be noted, however, that it is likely that much longer time will be needed for IXCs and LECs to deploy and implement the necessary network and administrative changes to comply with the new rules. Given that only AT&T and Sprint have tracking software that is operational and that Ameritech and Southwestern Bell Telephone have indicated that they have the capability to implement a carrier-pays compensation[36] it is likely that most other carriers do not currently have this capability. Because other carriers use different types of switches and may have those switches tailored to their particular needs, it is not reasonable to assume that simply because this software works

[36] *Id.* ¶ 10.

in a few large carrier networks that it would work in others. Even for those networks that have the software currently, it is likely that software modifications would be necessary to identify calls from public interest payphones, in which a payphone provider may be compensated differently.

If the Commission chooses a payphone compensation scheme in which a telecard service provider will be required to directly pay compensation to a payphone provider, major telecard service provider network changes would be necessary. As discussed above, telecard service providers would have to make network changes to be able to receive and process ANI information, would need to have tracking software developed and implemented that could identify the particular payphone that a call originated from and would need to make significant administrative changes to accurately make payphone provider payments. In some cases, the significance of these changes could be equivalent to that of a generic switch upgrade which typically requires 18 months for development and deployment, with additional time required for testing. Therefore, if the Commission adopts an approach where the telecard service provider pays directly to the payphone provider, it should allow at least 18 months from the date of adoption of the new rules to when telecard service providers must comply with the rules.

### D. The Act Enables The Commission To Provide Adequate Time That Extends Beyond The Nine Month Deadline In Section 276 For Carriers To Implement Network Changes

The language of Section 276 of the Act and its objectives enable the Commission to prescribe regulations that include a transition period to allow efficient and effective implementation of those regulations. Section 276(b)(1) requires that the Commission prescribe regulations within nine months after the date of enactment of the Telecommunications Act of 1996.[37] Section 276(a) additionally establishes nondiscrimination safeguards that Bell operating companies shall follow "[a]fter the effective date of the rules prescribed pursuant to subsection (b)."[38] In order for the regulations contained in Section 276(b) to be effective, the non-discrimination safeguards must be in place before or at least at the same time as these regulations.

If Congress had intended that a transition period between the prescription of regulations and their effective date would not be allowed, it would not have used the phrase "after the effective date of the rules prescribed pursuant to subsection (b)" and would have simply used the same phrase, "within 9 months after the date of enactment..." in both subsections (a) and (b). Thus, the choice of the phrase "after the effective date" in subsection (a) and that subsection (a) must apply at least at the same time as regulations prescribed pursuant to subsection (b) indicates that Congress recognized that there would be a need for a transition period following the prescription of regulations to their actual effective date.

Furthermore, the objectives of Section 276 suggest that the Commission must use its expertise to determine the appropriate transition period between the prescription of regulations and their effective date. The ultimate objective of this section is to promote payphone competition and services "to the benefit of the general public."[39] The Commission, relying on its unique telecommunications expertise, must assess what an appropriate transition period should be to ensure the general public benefits. The ITA has demonstrated that an adequate transition period is needed to ensure that the

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[37] 47 U.S.C. § 276 (b)(1).
[38] *Id.* at § 276 (a).
[39] *Id.* at § 276 (b)(1).

general public benefits. Without an adequate transition period, many members of the general public, particularly low income members, may in fact suffer due to increases in telecard rates as a result of unnecessary costs associated with expedited network upgrades and administrative changes.

## CONCLUSION

For all these reasons, the Commission should fashion a payphone compensation system that is compatible with the extremely price competitive—and socially valuable—services provided by telecard carriers. The optimal way to implement payphone compensation is by assessing charges on all providers of toll-free services from payphones, instead of charging telecard service providers directly.

Respectfully submitted,

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Dated: July 1, 1996

<u>EXHIBIT A</u>

**International Telecard Associaton**
**Members as of June 30, 1996**

ACMI
Advanced Communications Group, Inc.
Aerotel U.S.A., Inc.
Ameritech
Amerivox/World Telecom Group, Inc.
Atcall, Inc.
ATX Telecommunications Services
Bell Canada
BLT Techonologies, Inc.
Brilliant Color Cards
Cable & Wireless
Call Star One
Celebrity Debit Cards, Inc.
Century Telecommunications
Classiccards
Cleartel
Cominex
Communication Alliance Network
Communications Design Group
Conquest Telecommunications Services Corp.
Continental Plastic Card Company
CP & D Interactive System
Custom Plastic Cards Co.
Data Wave
Econophone
Carlos F. Escobar, Inc.
First Phonecard
Flanagan's Fonecards
Freedman Collectibles
FreedomNet Communications
Norman Porteous, President
Gazelle Telecards
GHR Telecommunications Consulting, Inc.
GJ Associates
Global Telecard Company
Global Communications Network
Global Telecommunications Solutions/Global Link
Golden Eagle Telecards
Grapevine Telecards
GTE Card Services
GTS/Global Link

Higher Powered Distributors, Inc.
Homisco/Voicenet
HT Technologies
Innovative Telecom Corp.
Intele-Card News
IntelliCommunications Network Inc.
International Discount Phone Services
International Phone Card Exchange
Invision, Inc.
Jericho Printing Systems
KARS Unlimited
Keep the Change
LDC Direct
LDDS Worldcom
Maloof Distributors
Marlowe Phone Card Concepts
Maxwell Partners
MCI Communications Corp.
Mercury Marketing Company, Ltd.
Moneycard Collector
Moore Business Communications Services
National Applied Computer Technologies (NACT)
NYNEX
Opal Manufacturing Ltd.
Open Development
Pacific Bell
Pacific Phone Cards
PCM Report
PCS Telecom, Inc.
PhilaCOMM, Inc.
Philcard International
Phonecards, Etc.
PhonLynx
Pick Communications Corp.
Powell Associates/PM Cards
Power Card International, Inc.
Premiere Communications Group, Inc.
Quest Telecom
Rand McNally
SCA Promotions, Inc.
Scoreboard Classic, Inc.
Sears Phone Card Dept.
Sirius Gmbh
SmarTel, Inc.
Southwestern Bell Telephone
Sprint Telemedia

Standard Register Company
Star Telecom Network
Steve Eyer, Incorporated
Stragetic Telecom Systems
Tele-Card, Inc.
Telecard World
Telecard Times
Telecard Regulatory Services
Telecard Services International Inc.
Telecard Services International Inc.
Telenova PCC, Inc.
Telesave, L.L.C.
Teltrust Communications Services, Inc.
Teraco, Inc.
The Collector's Advantage
University Printing Services
Univox
Uniworld Telecard
US West
US 800 Services LLC
UV Color
Voice Telephone Company
Watson Label Products
World Bell, Inc.
Worldwide Telecard
Zocom Technologies

## CERTIFICATE OF SERVICE

I, Cynthia Miller, do hereby certify on this 1st day of July, 1996, that I have served a copy of the foregoing document via messenger to the parties below:

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